

FOREIGN POLICY ASSOCIATION  
*Information Service*

VOLUME III.

SPECIAL SUPPLEMENT No. 4

THE UNITED STATES AND LATIN AMERICA  
*A Suggested Program*

By RAYMOND LESLIE BUELL  
*Research Director of the Foreign Policy Association*

JANUARY, 1928

PUBLISHED BY THE  
FOREIGN POLICY ASSOCIATION  
EIGHTEEN EAST FORTY-FIRST STREET  
NEW YORK CITY

# THE UNITED STATES AND LATIN AMERICA

## *A Suggested Program*

	PAGE
CONTRASTS IN DEVELOPMENT OF UNITED STATES AND LATIN AMERICA	77
THE INTRODUCTION OF THE MONROE DOCTRINE .....	78
UNITED STATES' INTERESTS CENTER IN THE CARRIBBEAN .....	79
PRESENT RECOGNITION POLICY TOWARD CENTRAL AMERICAN COUN- TRIES .....	80
OBLIGATIONS AND DIFFICULTIES OF AN "ANTI-REVOLUTION" POLICY	82
LATIN AMERICAN EFFORTS TO RESTRAIN FOREIGN INTERFERENCE .....	85
CONVENTIONS RESTRICTING FREEDOM OF THE UNITED STATES .....	86
THE VALUE OF LEAGUE MEMBERSHIP TO LATIN AMERICAN STATES ....	88
NEED FOR AMERICAN MACHINERY TO SETTLE DISPUTES .....	89
PROPOSAL OF INSTITUTE OF INTERNATIONAL LAW .....	91
PRECEDENT FOR UNITED STATES' COOPERATION .....	93

---

*The views expressed in Special Supplements to the "Information Service" are in each case those of the author; they are not intended to represent views of the Foreign Policy Association.*

# THE UNITED STATES AND LATIN AMERICA

## *A Suggested Program*

---

THERE are three main regions of the world with which American foreign policy is primarily concerned: Europe, the Far East and Latin America. The aspect of American foreign policy which has called forth the most criticism, particularly under the Wilson, Harding and Coolidge administrations, has been that relating to Latin America. United States policy with respect to Nicaragua, the new Panama treaty, the Mexican land and oil laws and the Tacna-Arica dispute has been the object of unfavorable comment in the European, Latin American and North American press. Recent events, superimposed upon a history of interference in the affairs of our southern neighbors, have developed a growing feeling of hostility and suspicion among them against the United States.

It is the view of official spokesmen that this suspicion is due to an unfortunate misunderstanding of American motives, which may be dissipated if we properly express to Latin America our friendship and our disinterestedness. The President of the United States has appointed an exceptionally strong delegation to the forthcoming Pan American Conference, whose assurances of good will officially pronounced at Havana may do much toward removing these misunderstandings. But, if our delegation confines itself to speech-making and fails to make any proposal embodying in definite and juridical form the principles of Pan Americanism pronounced by the United States in the past, disillusionment, if not failure, may be the result.

### POLITICAL AND ECONOMIC BACKGROUND OF LATIN STATES

In one sense, the United States and the Latin American Republics have a common origin; each achieved its independence of European masters more than a century ago. The United States enunciated the Monroe Doctrine in 1823 to warn European powers against attempting to extinguish the newly-won independence of the Latin-American

states. With certain exceptions, such as the annexation of the Falkland Islands by England in 1833 and the Venezuela ultimatums of 1902, Latin-America, whether or not because of the Monroe Doctrine, has during the last century been free from European meddling.

Although similar in political origin to the United States, the twenty republics south of the Rio Grande have nevertheless a different cultural and racial background, which inevitably affects their relations with outside nations. With the exception of Brazil, these countries speak the Spanish language, and adhere to the Catholic religion and to Latin institutions. From a cultural standpoint, they have more in common with France, Italy and Spain than with the United States. The inhabitants of Latin America are not, moreover, pure-blooded descendants of European colonists. Unlike the United States, which is for the most part peopled by transplanted Europeans, much of Latin America is a racial amalgam of the indigenous Indian population, the Spanish invaders, and African negroes, originally imported as slaves. The mixture of widely different cultural and racial strains has produced problems in Latin America with which the United States is not, at least to so great an extent, confronted. During the last century, the republics of Latin America have made a much less rapid advance than the United States, which has become probably the world's greatest power. Many of them have been subject to revolutions, *coups d'état*, dictatorships and wars.

In the 19th century, both the United States and Latin America relied primarily upon European investors for capital. In the United States the expenditure and direction of European capital was, however, in the hands of American business men and engineers. But owing to political instability and lack of technical experience, the investment of European capital in Latin America has almost everywhere taken the form of concessions. A concession is a privilege, or franchise, usually granted to a foreign in-

dividual or corporation, for developing certain resources or for constructing certain public works. Ordinarily the capital necessary for these enterprises is provided by the concessionaire who receives in return all, or a large share, of the profits made from exploiting the concession. Unlike business enterprises in the United States financed by foreign capital, many of the most important enterprises in Latin America are not only financed by foreign capital but are directed by foreign engineers and business men. This form of industrial control—the concession—gives to the foreigner in Latin America a direct political influence which the foreign investor cannot acquire in the United States.

#### LATIN AMERICAN DEPENDENCE UPON FOREIGN CAPITAL

In addition to granting concessions, a number of Latin American governments have themselves borrowed heavily in foreign countries for the purpose of constructing public works, for stabilizing their currency, or for other purposes. Governments coming into power as the result of a revolution generally found themselves in greater financial need than long-established authorities and were even more quick to seek funds in foreign markets in order to avoid unpopular levies at home. For the purpose of securing funds, many Latin American governments have been obliged to pay comparatively high interest rates, and sometimes they have been obliged to grant a lien on certain revenues as security for the loan and even to entrust the collection of the customs to foreign agents.

Disturbed at the control acquired under this system by foreign interests in their countries, Latin American governments have from time to time taken steps which in the eyes of foreigners infringe upon foreign property rights. Thus they frequently cancel a concession outright, or default on a loan. There have been about fifty cases of default by Latin American governments during the last century. These acts have often been accompanied by the destruction of foreign property and the occasional loss of foreign life, as incidental to revolutions with which Latin American countries are frequently afflicted.

#### DEVELOPMENT OF THE MONROE DOCTRINE

Governments have usually regarded it as a right, if not a duty, to protect the interests of their nationals in foreign countries by diplomatic interposition, or, in the case of small countries where it is possible to apply the principle, by armed intervention. But the application of this latter principle to South America by European governments was obstructed by President Monroe's declaration of December 2, 1823, that the United States would regard in an unfriendly light "any interposition for the purpose of oppressing" any independent state in Latin America or "controlling in any other manner" their destiny.

During the early stages of the effort of European powers to collect claims from the Venezuelan Government in 1902, John Hay, Secretary of State, declared that the United States could not object to European powers "taking steps to obtain redress for injuries suffered by their subjects [in Latin America], provided that no acquisition of territory was contemplated." But later President Roosevelt came to oppose even a temporary occupation of Latin American territory by a European power, out of fear that it would be converted into permanent tenure.

Mr. Roosevelt realized, however, that the United States could not conveniently shield Latin America from Europe without facing the question whether or not the states of Latin America had conformed to their obligations as defined by treaties or by the principles of international law.<sup>1</sup>

In his message to Congress on December 6, 1904, Roosevelt practically converted the Monroe Doctrine from an instrument barring the intervention of European states in Latin America into an instrument obliging the United States to intervene in these countries, under certain contingencies. In this message he declared that "chronic wrongdoing, or an impotence which results in a general loosening of the ties of civilized society, may in America, as elsewhere, ultimately require intervention by some civilized nation, and in the Western Hemisphere may force the United States, however reluctantly, in flagrant cases of such wrongdoing or im-

1. Cf. Hill, Howard C., *Roosevelt and the Caribbean*, University of Chicago Press, 1927.

potence, to the exercise of an international police power." The adherence of the United States to this definition of the Monroe Doctrine, which subsequent administrations seem to have followed for the last twenty years, has morally obliged the United States to intervene in Latin America to correct abuses which would otherwise lead European states to intervene in their own behalf.

Such seems to be the prevailing principle in our Latin American policy of the present day. If we did not intervene, but remained indifferent to the treatment of foreigners in certain Latin American countries, or to the repudiation of foreign obligations by Latin American countries, European governments might challenge our ethical right to prevent their intervention, and if our indifference to the right of Europeans continued, they might, especially if militaristically inclined, challenge our fiat and oblige us either to give way or go to war. Between this alternative and our own intervention in Latin America, there has only been one choice. The real basis of the Monroe Doctrine has been strategic.

#### UNITED STATES' INTERESTS CENTER IN CARIBBEAN

Fear of possible European control in the Western Hemisphere led the United States to view with disfavor French and British efforts to build an Isthmian canal in the nineteenth century. Such a fear had something to do with annexing Porto Rico following the Spanish-American War and with obliging Cuba to accept the Platt amendment in 1901. In a Treaty of 1903 the United States obtained the lease of the Panama Canal zone and the right to intervene, under certain contingencies, in the Republic of Panama—a state virtually carved out of Colombia with the aid of President Roosevelt. The belief that "there was imminent danger of foreign intervention," led President Roosevelt to establish a financial receivership in Santo Domingo in 1905. Similar motives prompted the establishment of a receivership in Nicaragua in 1914. Fear of the designs of European governments in Haiti led the United States to establish a military government in 1915, and to impose upon Haiti a treaty giving the United States control over the fi-

nances and police of the country and the right to intervene.<sup>2</sup> The occupation of Haiti was followed by that of Santo Domingo, which was occupied and governed by American marines from November 29, 1916 until July 12, 1924.

So far, the United States has not officially obtained political control over any state in South America proper. Intervention has been confined to the Caribbean and Central America, an area of tiny states whose activities are of great political importance because of their proximity to the Panama Canal, and because they might serve as bases from which unfriendly powers could threaten our defenses. The United States has greater political interests north of the Panama Canal than south—a fact which in the eyes of the American Government justifies a more stern policy in the first area than in the second. On the other hand the Latin American states naturally fear that the United States will eventually attempt to apply this Caribbean policy to South America. Consequently, our Caribbean policy has been criticized as severely in South America as in the countries where such intervention has actually taken place.

Other states in the position of the United States might have annexed the countries of the Caribbean and of Central America outright. We have not done so, however, because public opinion, to which the government must bow, has usually opposed territorial aggrandizement. It is open to argument, however, whether or not our partial self-restraint has worked to the advantage of the Central American peoples. We have interfered in their affairs in so far as we have deemed necessary to protect our own interests, but we have assumed no responsibility for bringing about permanent improvement in these countries. At the same time we have imposed a degree of control which, in the eyes of many Latins, prevents these countries from winning for themselves the experience and the sense of responsibility which can only result from the untrammelled right to make mistakes and the necessity of paying for them.

Latin American suspicions against the

2. Treaties of August 5, 1914 and September 16, 1915, *Treaties of the United States*, Vol. III, pp. 2673, 2740.

United States have been aroused, not only by the establishment of control over the Caribbean and Central American countries, but by the frequent landing of American armed forces, whenever, in the judgment of the State Department, or even a naval commander, such intervention is needed to protect foreign life and property threatened by disorder. Ordinarily, the commander merely establishes a neutral zone around such property, and orders the contending parties to keep their fighting outside. When outside interference is thus restricted to the immediate protection of property, it is not usually regarded, under international law, as technical intervention. But when we go further and interfere with the existing government or establish one of our own, intervention does take place,—and this has been resorted to in a number of instances which need not be related here.

#### **PRESENT RECOGNITION POLICY TOWARD CENTRAL AMERICA**

Strangely enough, the present recognition policy of the United States has been a cause for intervention, at least in Mexico and Central America. In the early period of our history, the United States Government followed the policy of recognizing *de facto* governments—any government which is a government in fact.<sup>3</sup>

But because of the numerous revolutions and dictatorships in Latin American countries which, in the opinion of the United States, injure local as well as foreign interests, the United States has abandoned the policy of *de facto* recognition in favor of a legitimist policy as far as certain Latin American States are concerned.<sup>4</sup> At a conference held under the auspices of the Presidents of the United States and Mexico, the Central American Governments signed at Washington on December 20, 1907, a convention in which the latter governments agreed that “they shall not recognize any other Government which may come into power in any of the five Republics as a con-

sequence of a *coup d'état*, or of a revolution against the recognized Government, so long as the freely elected representatives of the people thereof have not constitutionally re-organized the country.”<sup>5</sup>

In a new treaty, signed February 7, 1923, an addition was made to this provision which declared that even when a revolutionary government had been approved by popular election, the parties would not recognize any person elected as President, Vice-President or Chief of State designate, if he should be (1) the leader of a *coup d'état* or revolution or be related to such leaders through blood relationship or marriage; (2) or if the person elected should have been a Secretary of State or should have held some high military command during the accomplishment of the *coup d'état*, or revolution, or while the election was being carried on, or if he should have held this office or command within the six months preceding the *coup d'état*, revolution, or election. Furthermore, in no case should recognition be accorded to a citizen expressly and unquestionably disqualified by the Constitution of his country for election as President, Vice-President or Chief of State designate.<sup>6</sup>

Although the United States is not a party to the Central American treaty of 1923, the State Department fathered the adoption of these principles, and it is consequently morally obliged not to recognize as president of these countries any person disqualified by the local constitution. Acting under these principles the United States has declined to recognize such revolutionists as Huerta in Mexico, Tinoco in Costa Rica, Ayora in Ecuador, and Chamorro in Nicaragua.

#### **EFFECT OF RECOGNITION POLICY IN HONDURAS**

Well meaning as this policy may be, it has led to results which its authors could hardly have anticipated, as the following examples show.

In 1923, President Lopez Gutierrez was in power in Honduras, having managed to sup-

3. Cf. *The Recognition Policy of the United States with Special Reference to Soviet Russia*, Information Service, Vol. II, Supplement No. 3, November, 1926.

4. The policy of refusing recognition to *de facto* governments established by Revolution was apparently first proposed by Carlos R. Tobar, at one time Minister of Foreign Affairs of Ecuador. W. S. Robertson, *Hispanic-American Relations with the United States*, New York, 1923, p. 129.

5. Another article provided that no government of Central America should in case of civil war intervene in favor of or against the government of the country where the struggle takes place. Treaty of December 20, 1907, *Foreign Relations of the United States*, 1907, p. 696.

6. *Conference on Central American Affairs*, Washington, 1923, p. 289.

press thirty-four minor revolutionary outbreaks in the preceding four years. The State Department, carrying out the spirit of of the 1923 treaty, warned the candidates in the forthcoming elections that if any one of them violated the rules laid down in the 1923 treaty, he would not, if elected, receive the recognition of the United States. The election then took place and, according to a number of observers, General Carias was favored by a majority of the people. But owing to the control of the ballot box by President Gutierrez no candidate received a majority. Thereupon Gutierrez decided to stay in power even after the constitutional date for retirement. This decree led General Carias to take the field in a revolutionary movement which, after a loss of 1,500 lives and eight months' fighting, resulted in Carias' victory. But the State Department now informed Carias that since he had led the revolution he would not receive the recognition of the United States even if elected by the people. Carias pleaded that the revolution had been necessary to get rid of a dictator. When the United States maintained its position Carias obediently decided not to run for office.

#### UNITED STATES' INTERVENTION IN NICARAGUA

A somewhat similar situation arose in Nicaragua two years later.<sup>7</sup> Following the withdrawal of the American marines from Managua, in August, 1925, General Chamorro, a Conservative leader, threatened to take over the government from President Solórzano. Acting under the principles defined in the 1923 treaties, the State Department instructed the American Legations in Central America to announce that if he became president, Chamorro would not be recognized by the United States. Unlike Carias in Honduras, Chamorro decided to defy the United States—and in this it is understood that he acted on the advice of his lawyers in Washington. On January 16, 1926, he had himself designated president by a Congress packed with his personal supporters. Meanwhile Dr. Sacasa, the vice-president, and a Liberal, had been forced to flee the country.

7. A more complete description of the Nicaraguan situation is found in the Information Service, Vol. II, No. 24, *United States Policy in Nicaragua*.

Although the State Department declined to recognize Chamorro, the American Collector of Customs in Nicaragua paid over revenues to the *de facto* government. The State Department informed Sacasa, upon his visit to Washington in quest of aid, that it could do nothing about the situation except to not recognize Chamorro. Failing to find help in the United States against a government which the United States had refused to recognize, Sacasa turned to Mexico, which, according to reports, supplied him with arms and ammunition to attack the Chamorro regime.

Meanwhile, the American diplomatic representative at Managua urged Chamorro to resign and his persuasion was finally successful. On November 10, Senator Diaz, another Conservative, was designated president by a hastily convened congress.<sup>8</sup> Diaz was recognized by the United States the following week, despite the claims of Sacasa's Liberal supporters that he was the legitimate president.

Ostensibly to protect American and foreign interests, threatened by a revival of the Liberal revolution, following recognition of Diaz, the United States dispatched fifteen warships and 5,000 men to Nicaraguan waters during the winter of 1926-27. In March, President Coolidge sent a special representative, Mr. Henry L. Stimson, to Managua, with full power to negotiate a settlement between the warring factions. Mr. Stimson was finally compelled to inform both sides that if they did not disarm the United States would force them to do so. Finally, on the assurance that the United States would supervise the election of a president to succeed Diaz in 1928, the Liberals and Conservatives surrendered their arms to the American forces. During May, American marines received the arms and munitions of both factions and since that time they have been engaged in the task of disarming independent chiefs who refused to abide by the terms of the settlement. In the process, several hundred Nicaraguans have been killed, according to press reports.

8. The members ejected by Chamorro, following his coup d'état, were invited to take their seats in this Congress. Many Liberal leaders, however, protested that they were under duress.

### OBLIGATIONS IMPOSED BY PRESENT POLICY

Judging by experiences in Honduras and Nicaragua, not to mention the unfortunate expedition sent by President Wilson to Vera Cruz to drive Huerta from power in Mexico, it seems clear that our recognition policy embroils the United States in the internal affairs of Latin American states without giving any commensurate returns. Within the last few months, Nicaraguan leaders have been requesting the State Department to inform them whether or not they are eligible candidates for the forthcoming election. This policy obliges the American State Department to interpret and apply the constitution of each Latin American state, as well as the provisions of the treaty of 1923, to several candidates; and no matter in whose favor the State Department decides, a disgruntled opposition will agitate against the United States. As a result of this policy, many strong men are disbarred from holding office, leaving weak men as candidates, who in many cases can be maintained in office only with the moral and physical support of the United States. It was really on account of this "recognition policy" that the United States kept Marine guards at Managua from 1912 to 1925, and sent its naval forces to Nicaragua in 1926.

The only justification for this recognition policy, as far as the United States is concerned, is that the revolutions, which it is designed to thwart, injure foreign interests. But as a matter of fact, this policy has increased the reasons for revolutions in Latin America, and therefore, the damage to foreign interests. When the United States declines to recognize a government, such as the Chamorro Government in Nicaragua, the opposing factions are morally encouraged to drive the government from power.

### RESULTS FAIL TO JUSTIFY "ANTI-REVOLUTION" POLICY

Far from being democratic, this anti-revolution policy results in the indefinite maintenance in power of the existing administration. It is a notorious fact that in many Latin American countries the elec-

tions are rigorously controlled by the administration for the purpose of maintaining itself in office. There has never been a case in the history of Nicaragua where the government in power has suffered defeat at the polls. Revolution is the only instrument by which the people of such countries may obtain a new government. Any policy which merely attempts to suppress revolutions in Latin America perpetuates dictatorship. Such was the purpose of the Holy Alliance of 1815.

What virtue is there in a policy which recognizes dictatorships in Italy and in Spain and even in Chile and Peru, where forced elections are frequently held, and which declines to recognize them in Latin America? It would appear difficult for any nation to build up durable institutions so long as the United States recurrently attempts to impose upon that nation its ideas of democracy, which presuppose a system of fair elections and a literate electorate—conditions which do not as a rule exist in the countries of Latin America and not always in some of the states of the United States.

To remedy the situation in which our recognition policy has placed us, we must either make sure that fair elections are held in Latin American countries, or abandon our present recognition policy altogether. We now have undertaken to supervise the forthcoming election in Nicaragua. While the supervision of Latin American elections by the United States may have some advantages, it also presents grave disadvantages. These were illustrated in the municipal elections in Panama in 1912. At the request of the Panama Government the United States instructed the American infantry regiment stationed on the Isthmus to see that registration and voting in the forthcoming elections should be fair.<sup>9</sup>

When, as a result, the opposition party won, the Unión Patriótica, the government party, protested that the election had been carried on in a "fraudulent and scandalous manner."<sup>10</sup> The Minister of Foreign Affairs of Panama later attempted to limit the power of the American supervisors in

<sup>9</sup> *Foreign Relations of the United States*, 1912. p. 1142.

<sup>10</sup> *Ibid.*, p. 1155.

the forthcoming national election, while he declined to disarm the police, as had been suggested. The climax was reached when, on the ground that the American supervisors were partial to the opposition, the Unión Patriótica decided that its members should not vote.<sup>11</sup>

The American Minister reported that feeling "is intensely bitter, and this bitterness is naturally directed especially against the members of the committee and to some extent against Americans in general. In fact, rumors of violence to the members of the committee have been current."<sup>12</sup>

#### DIFFICULTIES PRESENTED BY SUPERVISION OF ELECTIONS

While the forthcoming supervised election in Nicaragua may prove the contrary, it would seem from the example of Panama that the defeated party in a supervised election will invariably accuse the United States of partiality; and that disputes over the powers of the supervisors may arise which may create ill-will. Two hundred American supervisors were necessary to watch the polls in the Panama elections, and a proportionately greater number would be necessary in a more populous country. The polls must also be policed, if not by American troops, at least by native guards under American command. However, if the plan is to work, it must be applied before internal conflict arises. Had the United States supervised the Nicaraguan elections in 1924 trouble might have been averted. But it is almost impossible to determine when or where trouble will arise; consequently, if this system is really to make revolution ethically unjustified, it must be installed throughout all of the Caribbean and Central American countries, if not in Mexico, Ecuador and other countries to which the United States has applied its present recognition policy. The practical difficulty of bringing an army of Americans into a country periodically to supervise elections would be enormous, and sooner or later the system would inevitably lead to ungrateful criticism by the local inhabitants. It is doubtful whether such

a plan would be acceptable either to the people of Latin America or to the people of the United States.

In view of these grave difficulties, it would seem more desirable to abandon our present policy of recognizing "constitutional governments" and recover our freedom to recognize any government which proves its existence in fact.<sup>13</sup>

#### PROTECTION OF AMERICAN AND FOREIGN PROPERTY RIGHTS

Probably as much hostility in Latin America has arisen out of our effort to protect property interests as out of intervention proper. The United States has frequently made representations to Latin American Governments, in regard to alleged impairment or destruction of foreign property rights. Such cases arise when a government expropriates an American estate, terminates a concession, imposes excessive taxation, defaults in the payment of interest on bonds held by foreigners, or when, owing to revolution or other disorder, foreign property and lives are injured or destroyed. The United States and European governments have frequently held Latin American countries liable for injuries inflicted upon foreigners during civil war, notwithstanding the rule of international law to the contrary<sup>14</sup>, and despite the fact that the United States and European powers have always declined to accept liability for damage caused by revolution within their own territories. This discrimination has naturally irritated Latin American countries, a number of whom have made treaties with European nations, in which the latter admit the non-liability of their governments for injuries sustained at the hands of revolutionists, provided the damage is not caused through the fault or

13. Chief Justice Taft declared in the British-Costa Rica arbitration case, as follows: "The merits of the policy of the United States in this non-recognition, [of the Tinoco government, established by a "coup d'état" in 1917] it is not for the arbitrator to discuss, for the reason that in his consideration of this case, he is necessarily controlled by principles of international law, and however justified as a national policy non-recognition on such a ground may be, it certainly has not been acquiesced in by all the nations of the world, which is a condition precedent to considering it as a postulate of international law. . . . Such non-recognition for any reason, cannot outweigh the evidence disclosed by this record before me as to the *de facto* character of Tinoco's government, according to the standard set by international law." *American Journal of International Law*, 1924, p. 153. He therefore ruled that the acts of the Tinoco government were not made invalid by the refusal of the United States to recognize it.

14. Borchard, E. M., *Diplomatic Protection of Citizens Abroad*, New York, 1915, pp. 288 ff.

11. *Ibid.*, p. 1162.

12. *Ibid.*, p. 1163.

negligence of the authorities. The United States has not, it seems, entered into any such non-liability agreement.

#### EARLY RELUCTANCE OF UNITED STATES TO PRESS CLAIMS

In its early history the United States was more reluctant to press the claims of its nationals upon Latin-American states than it is today. In 1823, John Quincy Adams, Secretary of State, wrote that an American making a contract in a foreign country "has no claim whatsoever to call upon the government of his nativity to espouse his claim, this government having no right to compel that with which he voluntarily contracted to the performance of that contract."<sup>15</sup>

In 1856, Secretary of State Marcy wrote, "The Government of the United States is not bound to interfere to secure the fulfillment of contracts between their citizens and foreign governments, it being presumed that before entering into such contracts, the disposition and ability of the foreign power to perform its obligations was examined, and the risk of failure taken into consideration."<sup>16</sup>

In 1885 Secretary of State Bayard wrote that the American Government would do nothing more than draw the attention of a foreign sovereign to a contractual claim and this would be done only when the claim was "one susceptible of strong and clear proof." He declared that if the state appealed to denied the validity of the claim or refused its payment, "the matter drops, since it is not consistent with the dignity of the United States to press, after such a refusal or denial, a contractual claim for the repudiation of which there is by the law of nations no redress." When the alleged debtor state declared that his courts were open to the pursuit of the claim "this by itself is a ground for a refusal to interpose."<sup>17</sup>

15. J. B. Moore, *Digest of International Law*, Vol. VI, p. 708.

16. Wharton, *Digest of International Law*, Vol. II, p. 665, as in Borchard, *Cited*, p. 287.

17. Moore, *cited*. Vol. VI, p. 716.

The United States has made a distinction between contractual claims and tortious claims, which now appears to be more hypothetical than real. For a full discussion, see Professor Borchard's standard work, *The Diplomatic Protection of Citizens Abroad*, particularly Chapter VII.

#### GROWING INVESTMENTS BRING CHANGE IN POLICY

Since the World War the investments of the United States in Latin America have grown with marked rapidity. It is estimated that at the end of 1927 the United States had investments in Latin America amounting to \$5,260,000,000, in comparison with European investments there of \$7,363,000,000. It is perhaps only natural that, with this increase of American investments, the attitude of caution which Secretaries Adams, Marcy and Bayard displayed toward the protection of American financial interests abroad, should disappear. One of the few distinguishable features of American foreign policy today is the persistence with which our government seeks openly to promote American foreign trade, and with which it protests against legislation, even before enactment, which in the eyes of the American Government may impair the rights of American investors or discriminate against American business interests abroad in favor of foreigners. The character of this policy is clearly revealed in the diplomatic correspondence relative to the Guayaquil-Quito Railway in Ecuador, the Mexican oil and land law legislation and the French tariff legislation.

The United States has frequently justified interference in Latin American affairs on the ground advanced by President Roosevelt that the outside world cannot tolerate a condition of chronic disorder and instability. This government seems to take the position that only those states which carry out certain minimum obligations are entitled to be treated as sovereign states, with which other states may not forcefully interfere. The American State Department has declared, "When a nation has invited intercourse with other nations, has established laws under which investments have been lawfully made, contracts entered into and property rights acquired by citizens of other jurisdictions, it is an essential condition of international intercourse that international obligations shall be met and that there shall be no resort to confiscation and repudiation."<sup>18</sup>

18. Letter of Secretary of State C. E. Hughes, *Mexican Claims Convention*. U. S. Congressional Record, January 23, 1924. p. 1326.

### LATIN AMERICA RESENTS INTERFERENCE BY UNITED STATES

While, from the ethical standpoint, something may be said for this point of view, for a number of reasons the doctrine is naturally unpopular in Latin America. No state enjoys being represented as guilty of failure to live up to its responsibilities; still less does it enjoy the brusque landing of troops on its soil. Latin American spokesmen may well point out that, under the present system, the United States in effect constitutes itself the sole judge of Latin America's obligations, in other words, the money-lender is the judge of his own case. They contend, on the other hand, that the debtor state alone should determine the extent of its liabilities, —a position which is equally untenable. In order to enforce this point of view, many Latin American states have written into their constitutions or into contracts with foreigners, a provision that disputes between a foreign individual and the government must be settled in the last instance by the local courts and that the claimant may not invoke the protection of his own government. This is called the Calvo Clause.<sup>19</sup> But the American Government—and in this position it is supported by a number of decisions of international tribunals—has never recognized the validity of the Calvo Clause and has always insisted on maintaining its right to interpose in favor of wronged Americans. Thus a situation may arise in which an American may affix his signature to a contract agreeing to waive the protection of his government; but when difficulties later occur, the American Government may nevertheless come to his aid. It is natural for Latin Americans to regard a person who, after expressly accepting the Calvo Clause, later benefits from government aid, as guilty of bad faith. The system cannot promote a feeling of confidence.

The Latin American states have also advocated the acceptance of the so-called Drago doctrine,<sup>20</sup> namely, that an American

state would not be subjected to armed intervention or occupation for the purpose of collecting a public debt. The second Hague Peace Conference, which met in 1907, drew up a convention partially adopting this doctrine in which the parties agreed not to have recourse to armed force for the recovery of contract claims unless the debtor state refused to arbitrate or to carry out the award. While this convention was ratified by the United States, it did not satisfy the Latin American states. By implication the convention authorized the use of force when a state was not financially able to satisfy an arbitral award—a condition which frequently exists in Latin America.<sup>21</sup> It authorized no bankruptcy proceedings,—no method of liquidating insolvency except by force. The Hague Convention has not prevented the United States from establishing a half-dozen financial receiverships in the Caribbean and Central America, the object of which is to insure payment of interest on foreign loans.

### CONVENTIONS RESTRICTING FREEDOM OF UNITED STATES

The only restrictions which the United States has agreed to place upon its freedom of action toward Latin America, apart from the Hague Convention; are contained in two conventions, the Pecuniary Claims Convention of 1902-1910,<sup>22</sup> and the Pan American Convention for the Pacific Settlement of Disputes, signed in 1923. The Voluntary Arbitration treaties of 1908 contain no specific obligation to arbitrate, while the obligations of the Bryan treaties of 1914-1915 have been embodied in the Convention of 1923. In the first Convention the parties agree to submit to arbitration all claims for pecuniary loss or damage presented by their respective citizens which cannot be amicably adjusted through diplomatic channels, when such claims are of sufficient importance to warrant the expense of arbitration. Such dis-

19. Carlos Calvo was a South American jurist and the author of *Le Droit Internationale theorique et pratique*. Fifth ed., 1896. 6 Vols.

20. Senor Luis M. Drago was Minister of Foreign Affairs of Argentina. His point of view is expressed in an article by him entitled *State Loans in Their Relation to International Policy*, *American Journal of International Law*, Vol. 1 (1907) p. 692; and in his well-known note of December 29, 1902, *Foreign Relations of the United States*, 1903, pp. 1-5. Cf. also Prof. Amos S. Hershey, *The Calvo and Drago Doctrines*, *American Journal of International Law*, Vol. 1, p. 26.

21. In one sense the convention marked a step backward. It authorized the use of force under certain conditions where previously force had not been employed, according to the practice of the United States. It is uncertain, under the convention, whether the debtor state may demand the arbitration of the claim. Borchard, *Diplomatic Protection of Citizens Abroad*, pp. 321, 328.

22. Convention of August 11, 1910. *Treaties of the United States*, Vol. III, p. 2922.

putes will be referred either to the International Court of Arbitration at the Hague or to a special jurisdiction. In either case it is necessary to draw up a special agreement or *compromis*, which must, like all arbitration treaties, be submitted by the American State Department to the Senate. Consequently, when a claim arises, not only must the consent of the foreign offices of both governments be secured for its submission to arbitration, but the consent of the United States Senate is also necessary. Failure to secure consent for the settlement of the specific claim of any one of these agencies will defeat arbitration. Thus the principle of compulsory arbitration, adopted in the Convention of 1902, is greatly weakened.

Although the United States has entered into a number of conventions for the settlement of specific claims with Latin American countries, it does not appear to have ever invoked the general claims Convention of 1902 as the basis of arbitration.<sup>23</sup> While the latter Convention may have the virtue of defining a moral principle, it has had little if any effect on actual procedure.

#### SCOPE OF THE 1923 CONVENTION

The 1923 Convention, referred to above, obligates the United States to refer disputes which cannot be settled by arbitration or diplomacy to *ad hoc* commissions of inquiry which shall report upon the subject within one year. During this period and for six months after the report the parties are obligated not to go to war.<sup>24</sup> Since 1848, how-

ever, the United States has never declared war against any Latin American state. In authorizing the invasion of Mexico in 1914 the American Congress disclaimed any hostility to the Mexican people or any intention to make war upon Mexico.<sup>25</sup> We frequently land troops in Nicaragua or in Honduras or in Panama without declaring war.

As far as the relations of great powers with small states are concerned—and the relations of Italy and Albania are another instance of the principle—the distinction between war and peace is losing its former importance. It is therefore more important to define what policy the United States should follow toward Latin America during times of peace than to erect obstacles to a formal declaration of belligerency. Through various forms of pressure, such as blocking loans and refusing recognition, a strong power is able to compel a small state to accept its demands without declaring war or even without a demonstration of force. With the growing dependence of small states upon outside finance, this indirect method of control will probably be more important in the future than in the past.

The weakness of the commission of inquiry plan is that it does nothing to prevent the growth of acrimony until the outbreak of war is imminent. It likewise does not apply to continuing wrongs or cases where the facts are not in dispute. At this point a solution is extremely difficult to find.

As one means of checking intervention by the United States, the Latin American Governments have favored the strengthening of the Pan-American Union. They have tried to establish a cooperative conception of the Monroe Doctrine, in place of the traditional unilateral conception, under which the United States has constituted itself the sole judge of Latin American obligations. Another effort in this direction will probably be made at the forthcoming conference at Havana early in 1928. Haiti, Argentina, the Dominican Republic, Mexico and Paraguay have already presented propositions for consideration there, making intervention of one state in the affairs of another state a violation of international law.

23. There is no mention of the Pecuniary Claims Convention of 1910 in the Claims Conventions between the United States and Mexico of September, 1923.

24. Treaty signed at Santiago, May 3, 1923, U. S. *Treaty Series* No. 752. These Commissions of Inquiry are composed of five members, all nationals of American States; each Government shall appoint two at the time of convocation, only one of whom may be a national of its country. The fifth shall be chosen by common accord by those already appointed and shall serve as President. In case a government refuses to accept the elected member, a substitute shall be appointed with mutual consent of the parties within thirty days. In the failure of agreement, the designation shall be made by the President of an American Republic not interested in the dispute, who shall be selected by lot by the Commissioners already appointed from a list of not more than six American Presidents to be formed as follows: each Government, party to the controversy, shall designate three Presidents of American States.

Under this Treaty any one of the Governments interested may apply for the Convocation of the Commission of Inquiry. This is done by communicating this decision to the other party and to one of the two Permanent Commissions. These Commissions are composed of the three diplomatic agents longest accredited at Washington and Montevideo, the seat of the Commissions. These Commissions simply receive requests and notify the other party immediately. Once the request is received by the Permanent Commission, the controversy between the parties "will *ipso facto* be suspended." (Chapter III).

25. H. J. Resolution, April 22, 1914. U. S. *Statutes at Large*, Vol. 38, p. 770.

At preceding conferences the United States has successfully forestalled any serious discussion of such proposals. It has insisted that the Pan-American movement should confine itself to non-political subjects,—that the Monroe Doctrine must be a matter for determination by the United States alone. The Pan-American Union has been regarded by many people in South America as a North American appendage. The seat of the Union is in Washington, although its logical place is in the Caribbean. Its Director General has always been a citizen of the United States. Unlike the League of Nations organization, the Pan-American Union does not publish its budget (which is made up of contributions from states upon the basis of population); nor does the Governing Board of the Union, which meets monthly, publish its minutes.

#### GENEVA OFFERS FORUM FOR LATIN AMERICAN STATES

Disappointed in their efforts to make the Pan-American Union an instrument of vital importance, some of the Latin American States have apparently turned from Washington to Geneva. Except for Mexico, Costa Rica and Ecuador, all of the Latin American States, ranging from the important state of Chile to the tiny state of Panama, are members of the League. While Argentina has attended only one Assembly of the League and while Brazil has served notice of withdrawal, there are signs that these two states will renew their affiliation in the future.<sup>25</sup> It might be pointed out that Mexico, Bolivia and Peru did not attend the last Pan-American Conference at Santiago.

The Third Assembly of the League elected as its president M. Edwards of Chile; the Fourth Assembly elected as president M. Cosme de la Torriente Y Peraza of Cuba; the Eighth Assembly elected M. Guani of Uruguay. The Council has been presided over by M. Da Cunha of Brazil, M. Guani of

Uruguay and by M. Villegas of Chile. At Geneva some Latin American states feel that they have a position of real equality which they have not found at Washington.

The last Assembly elected Cuba a member of the Council of the League, despite the fact that it is subject to the obligations of the Platt Amendment under which the United States has from time to time intervened in Cuba's affairs. This fact has caused the Paris *Temps* considerable worry; it has stated that the United States will indirectly control the Latin American states represented on the Council.<sup>26</sup>

At the Eighth Assembly of the League, the delegate of Panama took occasion to air the grievances of his government against the United States. In the course of his address, the delegate said:

"I therefore consider that it would be well to introduce and maintain the practice of inviting the Members of the League to come here from time to time and explain, possibly without any definite intention of their discussion or settlement, circumstances and conditions which in any way influence their international life. . . . Panama desires to inaugurate this practice as a proof of her profound respect for the League . . ."

He then proceeded to criticize the stand of the United States upon the pending Panama Treaty, and declared that it was "unthinkable" that the United States "in a dispute with a small, weak country," should refuse to submit to impartial judges a matter arising out of the interpretation of a treaty, and still more unthinkable that it should attempt to impose its own interpretation by some extrajudicial means.<sup>27</sup>

These criticisms of the United States may be repeated annually at Geneva, but it is difficult to answer them effectively since there is no representative of the United States at Geneva to reply.

#### LEAGUE COVENANT GUARANTEES TERRITORIAL INTEGRITY

The Covenant of the League of Nations guarantees the territorial integrity of each

25. It should be added also that Ecuador did not ratify the Treaty of Versailles and has never joined the League. Costa Rica joined in 1920, but resigned in 1925. Peru has not cooperated in the work of the League since 1923 and Bolivia has not cooperated since 1924. Of the five states who are in arrears in the contributions to the League of Nations, four are Latin American states,—Bolivia, Honduras, Nicaragua, Peru. The fifth state is China.

26. Guiliame, "Les responsabilités Américaines à Genève," *Le Temps*, November 3, 1927.

27. *Verbatim Record of the Eighth Ordinary Session of the League of Nations*, Eleventh Plenary Meeting, September 10, 1927. p. 8.

of its members against external aggression. Under League procedure, a Latin American State is entitled to invoke at once the protection of the Council of the League of Nations, should the United States intervene within its territory.

Article 17 of the Covenant provides that in the event of a dispute between a member of the League and a non-member, the non-member shall be invited to accept the obligations of membership for the purpose of the dispute, i. e., it shall be invited to submit its dispute to arbitration or to conciliation by the Council. If the state declines the invitation, and resorts to war against a member of the League, the military and economic sanctions provided in Article 16 of the Covenant shall be imposed.

Despite the fact that the League would probably not impose these sanctions against the United States, it could focus world opinion against us. From a legal standpoint, the relationships of Latin America to the United States have been revolutionized by the League of Nations. Instead of relying upon the Monroe Doctrine for their safety, the Latin American states may rely upon Article 10 of the Covenant, which, unlike the Monroe Doctrine, guarantees them against unjustified intervention by the United States as well as by European powers. The old argument, that Latin America must rely upon the Monroe Doctrine for protection against Europe, theoretically, therefore, falls to the ground. While, so far, the League's guarantee may not have had any effect upon the freedom of action of the United States, it might conceivably have such an effect in the future. According to one interpretation, Article 21 of the Covenant, which recognizes the validity of the Monroe Doctrine, would bar the interference of the League and enforcement of the sanctions of the Covenant against the United States in Latin America. But since the only state interested in defending the Monroe Doctrine is not a member of the League, this interpretation will not in all probability be accepted, in so far as League jurisdiction over Latin American disputes is concerned.

#### LEAGUE MAY TAKE COGNIZANCE OF INTERVENTION

It should be pointed out, however, that the League Covenant does not prevent intervention, provided it is for purposes recognized by the League Council, and is subject to international control. While the Covenant guarantees its members against aggression, it does not protect them from wrong doing. In case of the chronic unwillingness or inability of a backward government to fulfill its obligations to the world, the League would undoubtedly decide that "intervention" was not "aggression" within the meaning of the Covenant.

Sometimes it may be necessary to act immediately to prevent great interests from being irretrievably damaged. If such actions are *bona fide*, they are not necessarily prohibited. The Committee of Jurists, who interpreted the Covenant in connection with the Corfu affair, stated that "coercive measures which are not intended to constitute acts of war may or may not be consistent" with the Covenant, and it is for the Council of the League of Nations to decide.<sup>28</sup>

While the League of Nations Covenant does not necessarily rule out the temporary intervention of the United States in Latin America, the procedure of the League does provide that such intervention should be subject to the control of the Council which shall decide whether or not this intervention is justified.

#### NEED FOR AMERICAN MACHINERY TO SETTLE DISPUTES

In view of the grave difficulties which may arise out of any attempt to apply this procedure to Latin America, and in view of the hostility which Latin American States may foment against the United States from a forum located at Geneva, it would seem desirable to localize disputes between Latin America and the United States—and this can be done only by the establishment of American machinery which will command as much confidence in Latin America as do the organs of the League.

28. *Official Journal of the League of Nations*, 1924, p. 524.

In demanding that foreign governments respect American lives and property, the American Government is standing on sound ground in international law. But under the present system of international law, apart from special agreements to the contrary, each power decides for itself whether or not another state has fulfilled its obligations. In other words each state is both judge and party to the dispute. As long as disputes are confined to great powers, evenly matched in strength, a compromise is usually arrived at, containing elements of justice to both parties. But when one great state makes demands upon a small state, this balance is upset, and the chances are that the great state, without a declaration of war or even a demonstration of force, gets its way. Under this system, the Latin American governments and people cannot always believe that the United States is wholly disinterested in its demands, or that the demands are confined to legitimate scope.

How may the present situation be altered? There are those, especially in Latin America, who advocate a doctrine of complete non-intervention. But this doctrine would impose no restrictions upon the most outrageous and dishonest acts of states doing vital injury to foreign interests. With the growing economic and cultural unity of the world, the doctrine of non-intervention when interpreted to mean the absence of any international restraint, is certainly no longer tenable. Nevertheless, the United States could reduce the necessity for intervention in Latin America by abandoning its present policy of only recognizing so-called constitutional governments. We have already seen the absurd position in which this doctrine has sometimes placed us. The United States should return to its former policy of recognizing *de facto* governments. It should use its good offices to bring about the revision of the Central American Treaties of 1923.

In the second place, the United States should take the initiative in establishing machinery to arbitrate claims of American citizens against Latin American countries as they arise. Such machinery would save Latin American countries tremendous sums in interest which in the past they have some-

times been obliged to pay upon accumulated claims when settlement is finally reached.

#### TINOCO CASE EXAMPLE OF JUDICIAL SETTLEMENT

A careful review of the decision of Chief Justice Taft in the Tinoco concession case, or of the American-Mexican General Claims Commission, reflects the obvious earnestness of the judges in their efforts to test the genuineness of the claims placed before them. In the Tinoco concession case Chief Justice Taft had to decide whether or not the Costa Rican Government should pay the claims made against it by the British Government in behalf of the Royal Bank of Canada and of an oil concessionaire. Shortly before the Tinoco government went out of power, it secured an advance of \$200,000 from the Royal Bank of Canada, the repayment of which the Bank demanded from the succeeding government. In discussing the question, Chief Justice Taft stated that the bank "must make out its case of actual furnishing of money to the government for its legitimate use." But it had not done so. The bank knew that the money was to be used by the retiring president, F. Tinoco, for his personal support after he had fled to a foreign country and by his brother, who received from this loan his salary as Minister to Italy for four years in advance. Such payments were, according to Chief Justice Taft, "for obviously personal and unlawful uses of the Tinoco brothers." It could not now be made the basis of a claim that it was for any legitimate governmental use of the Tinoco government.<sup>29</sup>

In the oil concession granted by the Costa Rica Government in 1918, Amory & Son of New York, the original beneficiary, was granted certain exemptions from taxation. It also agreed to pay certain taxes into the Costa Rican Treasury. This concession was granted by the President of Costa Rica, and approved by the Chamber of Deputies. But

29. Following the death of Jose Tinoco in 1919 the Costa Rican Government prosecuted a suit of \$100,000 against his estate, which was compromised by a mortgage given by his widow for \$100,000. But Chief Justice Taft ruled that the Costa Rican Government could not repudiate the claim of the Royal Bank and also take this mortgage. Consequently he ruled that Costa Rica should assign the mortgage to the bank. "Arbitration between Great Britain and Costa Rica," *American Journal of International Law*, January, 1924, pp. 147, 168.

the Costa Rican constitution provides that both houses of Congress, meeting as a single body, must approve laws in regard to direct or indirect taxes. Consequently, Chief Justice Taft ruled that the concession was invalid under the Constitution of 1917, and therefore could not be enforced by an arbitral proceeding.<sup>30</sup>

Another interesting, if brief, judgment was handed down in the Neer case by the General Claims Commission of the United States and Mexico, in an opinion rendered October 15, 1926. This claim was presented by the United States in behalf of Mrs. Neer, the widow of an American mine superintendent who had been murdered in Mexico. It was alleged that his family sustained damages in the sum of \$100,000, and that the Mexican authorities had showed an unwarrantable lack of diligence in prosecuting the culprits.

In determining whether this claim should be allowed, the Commission declared that the grounds for liability depended upon whether there was convincing evidence (1) that the authorities administering the Mexican law acted in an outrageous way, in bad faith, or in wilful neglect of their duties; (2) that Mexican law rendered it impossible for them properly to fulfill their task. The United States Government made no attempt to establish the latter point. The first point was negatived by the full record of the police and judicial authorities produced by the Mexican Government before the Commission. While the Commission believed that better methods of handling the case could have been used, it found from the record that the local authorities, on the very night of the tragedy, went to the spot where the killing took place and examined the corpse; that the

following day witnesses were examined; that arrests were made; and that the persons suspected were subsequently released for want of evidence. In rebuttal the American Government offered nothing but affidavits stating individual impressions. Therefore, "in the light of the entire record in the case the Commission is not prepared to hold that the Mexican authorities have shown such lack of diligence or such lack of intelligent investigation in apprehending and punishing the culprits as would render Mexico liable before this Commission."<sup>31</sup>

Had these cases been left to diplomatic settlement, it is not improbable that the defendant government would have finally been forced to accept the demands of the United States. But through arbitral procedure, claims may be weighed and examined according to rules of evidence and to principles of international law. Thus, out of the fifty-one claims against Mexico submitted by the United States, the General Claims Commission rejected fifteen claims outright; while it scaled down the total claimed by the United States from \$3,790,796 to \$2,221,659.

#### FINANCIAL CLAIMS EASILY ARBITRATED

International disputes may be divided roughly into two classes: (1) those affecting states as such, (2) those in which the state merely acts in behalf of individuals instituting a claim. This second category comprises the disputes which arise out of the infringement of the rights of an alien investor or business man in a foreign country. While few states so far have proved willing to submit all disputes of the first type to arbitration, there is no good reason why they should not submit disputes of the second type to judicial settlement. In fact, the United States has solemnly recognized this principle so far as pecuniary claims are concerned by ratifying the Convention of 1902-1910. A

30. The decision may have far-reaching consequences, if followed elsewhere. For example, the Chinese Government has denied the validity of the 1915 treaties by which Japan secured the extension of its lease in Manchuria, on the ground that these treaties were not approved by the Chinese Parliament in accordance with the Chinese Constitution. So far, the Japanese Government has declined to accept this point of view, which would seem to receive support from the above decision.

The spirit with which Mr. Taft handed down this judgment is shown from the concluding paragraph: "So far as the payment of the expenses of the arbitration is concerned, I know of none for me to fix. Personally, it gives me pleasure to contribute my service in the consideration, discussion and decision of the questions presented. I am glad to have the opportunity of manifesting my intense interest in the promotion of the judicial settlement of international disputes; and accept as full reward for any service I may have rendered, the honor of being chosen to decide these important issues between the high contracting parties."

31. *Neer v. Mexico*, *American Journal of International Law*, July, 1927, p. 555. The head-note of the case stated, "The treatment of an alien, in order to constitute an international delinquency, should amount to an outrage, to bad faith, to wilful neglect of duty, or to an insufficiency of governmental action so far short of international standards that every reasonable and impartial man would readily recognize its insufficiency. Whether the insufficiency proceeds from deficient execution of an intelligent law, or from the fact that the laws of the country do not empower the authorities to measure up to international standards, is immaterial."

supplementary agreement, however, is necessary to make this agreement effective. Some standing commission or tribunal must be established which may take jurisdiction over cases as they arise, and so obviate the laborious procedure of negotiating an independent agreement each time claims are presented.

#### EUROPEAN CLAIMS SETTLED THROUGH THE WORLD COURT

A method must be devised of settling by judicial means the claims not only of the United States but of Europe against Latin America. The latter problem is comparatively simple. Those European states which adhere to the League of Nations and to the World Court have not the slightest justification for the use of extra-legal means to enforce their views on Latin America. Machinery already exists whereby their claims may be determined. This procedure would be facilitated by the acceptance of the optional clause in the statute of the World Court by the Latin American and European countries or by the establishment of European-American claims tribunals.

The chief difficulty arises in connection with the claims of the United States, which will probably be more numerous in the future than those of European claims against Latin America. The United States has not adhered to the Permanent Court of International Justice and it is impracticable to suggest that our claims be submitted to that tribunal. Moreover, from the standpoint of principle, it would seem unwise to take claims of individuals to the Hague. If a claims tribunal is to perform its duties adequately, it should work on or near the spot. Any wholesale attempt to submit claims to the Permanent Court of International Justice would obviously involve great expense and delay.

#### PROPOSAL OF INSTITUTE OF INTERNATIONAL LAW

The American Institute of International Law has recently proposed the establishment of a Pan American Court of Justice<sup>32</sup> having obligatory jurisdiction in cases involving

(1) the interpretation of a treaty, (2) the existence of any fact which, if established, would constitute a breach of international obligation, (3) the nature and extent of reparation to be made for the breach of an international obligation, (4) the interpretation of a sentence passed by a court.

This court would be composed of a judge appointed by each of the American Republics. Each party would also name a Canadian jurist, one of whom should be selected by lot to be a member of the court. The first half of this list of judges, as determined by lot, would form the Court of First Instance, the second half should form a Court of Appeal. If the name of the delegate of the United States should be drawn before that of Canada, he would be placed on the Court of First Instance, while the Canadian delegate would go on the Court of Appeal, and vice versa. This arrangement thus insures a representative of Anglo-Saxon law on each tribunal.

Both from the standpoint of jurisdiction and of composition, this court seems to be impracticable. In fact, it was not considered at the meeting of American jurists at Rio de Janeiro in April, 1927, who met to prepare drafts to be laid before the forthcoming Havana Conference. As far as jurisdiction is concerned, such a court would have the power to decide whether or not the United States had sovereignty over the Panama Canal—a question which involves the interpretation of a treaty. It is doubtful whether the United States would ever grant a tribunal any such power. From the standpoint of composition, this tribunal would be composed of nine Latin American judges and one North American judge—nine representatives of debtor states and of the Civil law, against one representative of the creditor state and the Common law. The fear of the United States of a tribunal weighted with Latin Americans was illustrated in connection with the Santa Isabel case which came before the Special Claims Commission set up between the United States and Mexico in February, 1926. This was a claim of the heirs of Americans who had been killed by bandits under Pancho Villa in 1916. The Commission was composed of one judge from Mex-

32. Project No. 28, *Codification of American International Law*, Pan American Union, Washington, 1925, p. 106.

ico, one judge from the United States and a third judge from Brazil. The latter judge had been selected by agreement between the United States and Mexico. In this case the Commission, in an opinion by the Brazilian judge, rejected the claim for damages on the ground that the act was committed by bandits, for whom Mexico was not responsible under the treaty. It was an act of *force majeure* or of fortuitous circumstances. The court said: "To impose on the Mexican Government the obligation to guard every foreigner who enters the country in an abnormal situation is to impose upon it an impossible task. . . ."<sup>33</sup>

This judgment brought forth much criticism from certain circles in the United States and it was even charged that the judgment was due to improper influence upon the Brazilian judge.<sup>34</sup>

Following the expression of such sentiments, the Brazilian judge resigned and since that time the Special Claims Commission has not met. Whether or not the criticism of the United States against this judgment was or was not justified, the fact remains that suspicion is great in this country that a court containing a great preponderance of Latin American judges would invariably decide against the United States. Any Pan American Court in which the United States could have only one out of ten judges could not receive the approval of the United States Senate.

#### PROPOSED CLAIMS TRIBUNALS

Some new formula must therefore be produced. Instead of attempting to establish a single Pan American Court of Justice, to which all American states may have access, it would be more expedient for the United States to negotiate a separate Claims Convention with each Latin American country providing for the compulsory arbitration of individual claims by a standing tribunal.

33. *Casos de Santa Isabel*, "Ante la Comisión Especial de Reclamaciones, México Y los Estados Unidos," No. 449, Imprenta de la Secretaría de Relaciones Exteriores, 1926, p. 94.

34. *New York American*, November 25, 1927.

This court would thus have much less jurisdiction than the court proposed by the American Institute of International Law.

At any time during the interval between sessions, either party should be allowed to refer a dispute over a claim to the Director General of the Pan American Union who could enter it on the docket of the court. The reference of such a dispute to the Director General of the Pan American Union should at once bring to an end all diplomatic correspondence, and the pressure and haggling which accompanies it. This procedure was adopted in 1923 in the Pan-American Treaty for the Settlement of Disputes. It would automatically transfer a dispute from the realm of diplomacy to a court of law. In case no disputes are referred to the tribunal during the period following its last session the two governments may agree to postpone the session until the next regular date.

#### COMPOSITION OF PROPOSED TRIBUNALS

The tribunal should be composed of a judge from each of the two countries and a third judge, preferably a non-American. If within a stated period before the session of the tribunal the two governments concerned have not agreed upon a third judge, the Director General of the Pan American Union should be authorized to choose by lot such a judge from a standing panel of five names chosen by each Pan American Conference.<sup>35</sup>

If a claim is not filed before such a tribunal within three years it should become outlawed. Any such system should provide some method for re-hearing cases or provid-

35. That this procedure is practical is shown by the fact that a similar procedure was written into the Paris Peace Treaties in regard to members of the Mixed Arbitral Tribunals. Article 304 of the Treaty of Versailles states that each Arbitral Tribunal shall consist of three members. "Each of the governments concerned shall appoint one of these members. The President shall be chosen by agreement between the two Governments concerned."

"In case of failure to reach agreement, the President of the Tribunal and two other persons, either of whom may in case of need take his place, shall be chosen by the Council of the League of Nations. . . . If any Government does not proceed within a period of one month in case there is a vacancy to appoint a member of the Tribunal, such member shall be chosen by the other Government from the two persons mentioned above other than the President."

The principle of choosing by lot, suggested in the text, was adopted in 1923 in the Pan-American Treaty for the Pacific Settlement of Disputes.

ing for an appeal, possibly to the Permanent Court of International Justice at the Hague.

This system would necessitate the establishment by the United States of about twenty claims tribunals,—one for each country in Latin America. But this does not mean that we would have to support twenty judges. For the time being five judges could probably do the work. Much of the work could be done at some central point like Havana. The annual expense of such a system to the United States should not be more than \$150,000 a year in comparison with the \$350,000 appropriated this year by Congress for the United States-Mexico General Claims Commission,—for the settlement of claims with Mexico alone. \$150,000 is about a tenth of the cost of a cruiser.

Hitherto it has been the practice of the United States to furnish gratuitous legal advice to citizens bringing claims before a claims tribunal. There seems to be no just reason why the parties to a case should not assume the expense of counsel, as they do in proceedings at municipal law.

This procedure, which utilizes the Director-General of the Pan American Union to receive requests for setting in motion the arbitral machinery and to cast a lot, in case of a deadlock, for a third judge, would make the establishment of continuous arbitral machinery practicable, and would also enhance the authority of the Pan American Union.

#### A PROPOSED "COOLIDGE DOCTRINE"

Despite the establishment of such machinery for the settlement of disputes affecting individuals, the need for intervention in Latin America (as well as elsewhere) may arise. Then if a state repeatedly shows bad faith in the fulfillment of its recognized obligations, or if it shows itself chronically unable to maintain order with the result that foreign lives are constantly endangered, the outside world may demand intervention. But the United States must face the question of deciding whether it should remain sole judge of whether or not this intervention should take place. Despite the sincerity and the disinterestedness which has usually prompted the American Government in the past, its interferences in Latin American

affairs have brought down a torrent of criticism, which undoubtedly will not be diminished if we continue this policy in the future. This system is inherently defective, simply because we are, ourselves, both a judge and party to the same case.

The Pan American Union might again be utilized to diminish this criticism without impairing our interests. President Coolidge would take his place in history along with President Monroe, if either at the Havana Conference or in an address to the Congress of the United States, he would make a declaration to the effect that, before intervening in any Latin American state, the American Government would first consult with the Governing Board of the Pan American Union, which is composed of the diplomatic representatives of the Latin American states in Washington. The American Government need not be bound by the advice of this board; its only obligation should be that of consultation.

#### PRECEDENTS FOR UNITED STATES' COOPERATION

There are a number of precedents for this form of cooperation. In 1906 President Roosevelt and President Diaz of Mexico cooperated in bringing about peace between the Central American republics.<sup>36</sup>

In 1910 the United States, Argentina and Brazil jointly mediated in a boundary dispute between Ecuador and Peru.<sup>37</sup>

In 1915 President Wilson invited the "A. B. C." powers to mediate between the United States and Mexico, and several times thereafter President Wilson asked the cooperation of the Latin American states in regard to action concerning Mexico. The effect of this cooperation was to stimulate a feeling of friendship between South America and the United States.<sup>38</sup>

There is no doubt but that the enunciation of such a Doctrine and the establishment of this type of procedure would disarm much of

36. *Foreign Relations of the United States*, 1906, p. 834.

37. *Ibid.*, 1910, p. 438.

38. Cf. "Pan Americanism and the Pan American Conference," *Foreign Policy Information Service*, Vol. III, No. 19, November 25, 1927, p. 280.

the hostility and suspicion against the United States in Latin America. Should a majority of the Governing Board of the Pan American Union approve the intervention of the United States, the country concerned would know that it was the opinion of an international and relatively impartial body of men that such intervention was justified, and foreign criticism would be disarmed. Under these circumstances the United States would act under a mandate from the American states. In case the Governing Board of the Pan American Union should disapprove the intervention, the State Department would be given an opportunity carefully to consider whether, from the standpoint of American interests, intervention was still justified. If the United States should proceed to intervene against the wishes of the Pan American Union it must be admitted that great opposition in Latin America would be created against the United States. But it is difficult to believe that the opposition would be any greater in the future than it has been in the past.

In short, the three suggested proposals, for an improvement of relations between the United States and Latin America, are:

1. A change in our recognition policy so as to recognize *de facto* governments;

2. The establishment of a permanent claims tribunal between the United States and Latin American countries having annual or bi-annual sessions;

3. A Coolidge doctrine stating that the United States will not intervene in Latin American affairs without consulting the Governing Board of the Pan American Union.<sup>39</sup>

It is believed that these would provide the basis of a new Latin American policy which would preserve the Monroe Doctrine and the interests of the United States, yet at the same time satisfy the legitimate demands of Latin America and conform to the best international methods as well as to the historic tradition of the country for the orderly and pacific settlement of international disputes.

The difficulties involved in the successful application of these proposals are readily recognized. They are here set forth merely as suggestions in the hope that they may serve as the basis of public discussion of a problem which will grow in importance in the future.

39. The above suggestions do not go nearly as far as President Wilson's proposal of January 6th, 1916, in favor of a guarantee of the political independence and territorial integrity of the States of America and an agreement for investigation and arbitration of all disputes between American States.

